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August 2, 2007

**VIA TELEFAX AND ECF - 212-805-6382**

Honorable Victor Marrero  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

RE: National Subrogation Services v. Yellow Transportation  
Index No.: 07 CV 4817 (VM)  
Our Ref.: 07-S-001-LS

Dear Judge Marrero:

We represent the plaintiff, National Subrogation Services, LLC, in the above captioned matter. Pursuant to the Notice of Initial Conference dated July 24, 2007, attached is the parties' joint letter addressing various issues.

An Initial Case Management Conference is scheduled for August 9, 2007 at 10:15 a.m. We thank the Court for its kind attention to this matter.

Very truly yours,

BADIAK & WILL, LLP

  
LISA A. SCOGNAMILLO

LAS/lmw  
Enc.

cc: **VIA TELEFAX AND ECF 201-343-5181**

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Attn: Kenneth Hoffman, Esq.

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August 2, 2007

**VIA TELEFAX AND ECF - 212-805-6382**

**JOINT LETTER**  
**INITIAL CASE MANAGEMENT CONFERENCE**

Honorable Victor Marrero  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

RE: National Subrogation Services v. Yellow Transportation  
Index No.: 07 CV 4817 (VM)  
Nowell Ref.: 2553.99  
Badiak Ref.: 07-S-001-LS

Dear Judge Marrero:

This joint letter is respectfully submitted in accordance with the Notice of Initial Conference dated July 24, 2007, and in connection with the upcoming August 9, 2007 Initial Conference.

**(1) CASE DESCRIPTION**

**(A) Plaintiff's Factual and Legal Basis for Claims**

This matter arises under the Carmack Amendment, 49 U.S.C.S § 14706, which governs suits involving bills of lading for interstate shipments by motor carrier. This Court has original jurisdiction over this matter pursuant to 33 U.S.C.S. § 1337 because the amount in controversy exceeds \$10,000.00, exclusive of interest and costs.

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Southern District of New York  
August 2, 2007  
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On or about June 13, 2006, Chappell Gallery, LLC ("Chappell"), plaintiff's subrogor, entered into a contract of carriage with defendant, Yellow Transportation, Inc. ("Yellow") for the shipment of cargo from New York, New York to Dallas, Texas via truck transport. The applicable bill of lading expressly and accurately lists the cargo as a glass column and a glass doll. Yellow had accepted from Chappell the same or similar cargo for interstate shipment on several prior occasions.

The shipment was received by Yellow in good order and condition. However, when the shipment arrived in Dallas, Texas, the glass column was damaged. This fact is expressly stated in Yellow's delivery receipt.

In the bill of lading, Yellow expressly agreed that its total liability and the declared value for the shipment was \$19,000.00. The sales invoice shows that the glass column was valued at \$15,000.00 and the glass doll at \$4,000.00. Plaintiff now seeks to recover based upon Yellow's express representation to Chappell that Yellow's total liability for this shipment was \$19,000.00. Chappell's cost to replace the damaged glass column is \$14,000.00, well within Yellow's total liability of \$19,000.00.

Chappell was fraudulently induced to enter into the contract of carriage based upon Yellow's express representation in the bill of lading that Yellow's total liability for the shipment and the declared value was \$19,000.00. Chappell was further fraudulently induced into entering the contract of carriage based upon a prior course of dealing between the parties wherein Yellow accepted the same or similar cargo for interstate shipment. Additionally, Yellow committed fraud in thereafter denying Chappell's claim, despite the fact that Yellow's total liability for the shipment was expressly agreed to be \$19,000.00. The freight rate that Chappell agreed to was also based upon Yellow's representation that its total liability was \$19,000.00.

Chappell received payment for the damaged glass column pursuant to an applicable insurance policy. Plaintiff, National Subrogation Services, LLC ("NSS") is now subrogated to Chappell's rights to recovery.

**(B) Defendant's Factual and Legal Basis for Defenses**

This is a subrogated cargo damage claim in the amount of \$14,000.00. Plaintiff, National Subrogation Services, LLC brings this claim to recover monies paid to the shipper, Chappell Gallery, LLC for damages to a glass column.

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The Defendant, Yellow Transportation, Inc., is a federally licensed interstate motor carrier. Yellow received certain goods on June 13, 2006 as identified on a certain Bill of Lading for transportation in interstate commerce.

The case is governed by the federal transportation law, specifically 49 U.S.C. § 14706, commonly referred to as the Carmack Amendment. Under Carmack, the Plaintiff's assignee, National Subrogation Services, LLC, must prove three (3) things to establish a *prima facie* case: (1) receipt by the carrier (Yellow) in good condition; (2) receipt by the ultimate consignee in damaged condition; and (3) the amount of the damages.

Yellow's tariff limitations of liability and rules are incorporated through the Bill of Lading on this shipment. The damages alleged may be limited. The Defendant also alleges that the damage was caused by the fault of the shipper through improper packaging.

## **(2) CONTEMPLATED MOTIONS**

### **A. Plaintiff's Response**

At this time, plaintiff contemplates making a summary judgment motion. Additional motions may be considered as the parties engage in discovery.

### **B. Defendant's Response**

Defendant, Yellow Transportation, Inc., contemplates a motion for partial summary judgment to limit the damages to the limitation of liability contained in the Yellow Tariff that governed the shipment. Defendant has been successful in bringing such motion for partial summary judgment to narrow the scope of the issues involved, most recently before Judge Sand.

## **(3) PROSPECT FOR SETTLEMENT**

### **A. Plaintiff's Response**

Plaintiff is willing to entertain any reasonable settlement offer.

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**B. Defendant's Response**

Although the parties have not directly exchanged settlement numbers, it is believed that given the dollar figures involved, \$14,000.00, and depending upon the outcome of the motion for partial summary judgment, this case has a potential to settle.

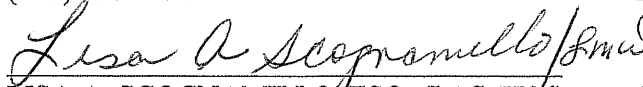
**(4) CONSENT TO PROCEED BEFORE MAGISTRATE**

The parties do not consent to proceed for all purposes before the Magistrate Judge.

We thank the Court for its attention to this matter.

Respectfully submitted,

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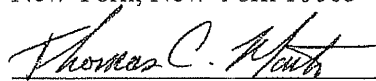
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cc: **VIA TELEFAX AND ECF 816-983-8080**

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Respectfully submitted,

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